

111TH CONGRESS
1ST SESSION

S. 2336

To safeguard intelligence collection and enact a fair and responsible reauthorization of the 3 expiring provisions of the USA PATRIOT Improvements and Reauthorization Act.

IN THE SENATE OF THE UNITED STATES

OCTOBER 29, 2009

Mr. SESSIONS (for himself, Mr. LIEBERMAN, and Mr. BOND) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To safeguard intelligence collection and enact a fair and responsible reauthorization of the 3 expiring provisions of the USA PATRIOT Improvements and Reauthorization Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “USA PATRIOT Reau-
5 thorization Act of 2009”.

1 **SEC. 2. USA PATRIOT IMPROVEMENT AND REAUTHORIZA-**
 2 **TION ACT SUNSET PROVISIONS.**

3 (a) IN GENERAL.—Section 102(b)(1) of the USA
 4 PATRIOT Improvement and Reauthorization Act of 2005
 5 (Public Law 109–177; 50 U.S.C. 1805 note, 50 U.S.C.
 6 1861 note, and 50 U.S.C. 1862 note) is amended by strik-
 7 ing “2009” and inserting “2013”.

8 (b) CONFORMING AMENDMENTS.—

9 (1) IN GENERAL.—Section 601(a)(1)(D) of the
 10 Foreign Intelligence Surveillance Act of 1978 (50
 11 U.S.C. 1871(a)(1)(D)) is amended by striking “sec-
 12 tion 501;” and inserting “section 502 or under sec-
 13 tion 501 pursuant to section 102(b)(2) the USA PA-
 14 TRIOT Improvement and Reauthorization Act of
 15 2005 (Public Law 109–177; 50 U.S.C. 1861 note);”.

16 (2) APPLICATION UNDER SECTION 404 OF THE
 17 FISA AMENDMENTS ACT OF 2008.—Section
 18 404(b)(4)(A) of the FISA Amendments Act of 2008
 19 (Public Law 110–261; 122 Stat. 2477) is amended
 20 by striking the period at the end and inserting “, ex-
 21 cept that paragraph (1)(D) of such section 601(a)
 22 shall be applied as if it read as follows:

23 ‘(D) access to records under section 502 or
 24 under section 501 pursuant to section
 25 102(b)(2) the USA PATRIOT Improvement

1 and Reauthorization Act of 2005 (Public Law
2 109–177; 50 U.S.C. 1861 note);’.”.

3 (3) EFFECTIVE DATE.—The amendments made
4 by this subsection shall take effect on December 31,
5 2013.

6 **SEC. 3. EXTENSION OF SUNSET RELATING TO INDIVIDUAL**
7 **TERRORISTS AS AGENTS OF FOREIGN POW-**
8 **ERS.**

9 (a) IN GENERAL.—Section 6001(b) of the Intel-
10 ligence Reform and Terrorism Prevention Act of 2004
11 (Public Law 108–458; 50 U.S.C. 1801 note) is amended
12 to read as follows:

13 “(b) SUNSET.—

14 “(1) REPEAL.—Subparagraph (C) of section
15 101(b)(1) of the Foreign Intelligence Surveillance
16 Act of 1978 (50 U.S.C. 1801(b)(1)), as added by
17 subsection (a), is repealed effective December 31,
18 2013.

19 “(2) TRANSITION PROVISION.—Notwithstanding
20 paragraph (1), subparagraph (C) of section
21 101(b)(1) of the Foreign Intelligence Surveillance
22 Act of 1978 (50 U.S.C. 1801(b)(1)) shall continue
23 to apply after December 31, 2013, with respect to
24 any particular foreign intelligence investigation or
25 with respect to any particular offense or potential of-

1 fense that began or occurred before December 31,
2 2013.”.

3 (b) CONFORMING AMENDMENT.—

4 (1) IN GENERAL.—Section 601(a)(2) of the
5 Foreign Intelligence Surveillance Act of 1978 (50
6 U.S.C. 1871(a)(2)) is amended by striking the semi-
7 colon at the end and inserting “pursuant to sub-
8 section (b)(2) of section 6001 of the Intelligence Re-
9 form and Terrorism Prevention Act of 2004 (Public
10 Law 108–458; 50 U.S.C. 1801 note);”.

11 (2) EFFECTIVE DATE.—The amendment made
12 by paragraph (1) shall take effect on December 31,
13 2013.

14 **SEC. 4. JUDICIAL REVIEW OF NATIONAL SECURITY LET-**
15 **TERS.**

16 Section 3511(b) of title 18, United States Code, is
17 amended to read as follows:

18 “(b) NONDISCLOSURE.—

19 “(1) IN GENERAL.—

20 “(A) NOTICE.—If a recipient of a request
21 or order for a report, records, or other informa-
22 tion under section 2709 of this title, section
23 626 or 627 of the Fair Credit Reporting Act
24 (15 U.S.C. 1681u and 1681v), section 1114 of
25 the Right to Financial Privacy Act of 1978 (12

1 U.S.C. 3414), or section 802 of the National
2 Security Act of 1947 (50 U.S.C. 436), wishes
3 to have a court review a nondisclosure require-
4 ment imposed in connection with the request or
5 order, the recipient shall notify the Govern-
6 ment.

7 “(B) APPLICATION.—Not later than 30
8 days after the date of receipt of a notification
9 under subparagraph (A), the Government shall
10 apply for an order prohibiting the disclosure of
11 the existence or contents of the relevant request
12 or order. An application under this subpara-
13 graph may be filed in the district court of the
14 United States for any district within which the
15 authorized investigation that is the basis for the
16 request or order is being conducted. The appli-
17 cable nondisclosure requirement shall remain in
18 effect during the pendency of proceedings relat-
19 ing to the requirement.

20 “(C) CONSIDERATION.—A district court of
21 the United States that receives an application
22 under subparagraph (B) should rule expedi-
23 tiously, and shall, subject to paragraph (3),
24 issue a nondisclosure order that includes condi-
25 tions appropriate to the circumstances.

1 “(2) APPLICATION CONTENTS.—An application
2 for a nondisclosure order or extension thereof under
3 this subsection shall include a certification from the
4 Attorney General, Deputy Attorney General, an As-
5 sistant Attorney General, or the Director of the Fed-
6 eral Bureau of Investigation, or in the case of a re-
7 quest by a department, agency, or instrumentality of
8 the Federal Government other than the Department
9 of Justice, the head or deputy head of the depart-
10 ment, agency, or instrumentality, containing a state-
11 ment of specific facts indicating that, absent a pro-
12 hibition of disclosure under this subsection, there
13 may result—

14 “(A) a danger to the national security of
15 the United States;

16 “(B) interference with a criminal, counter-
17 terrorism, or counterintelligence investigation;

18 “(C) interference with diplomatic relations;

19 or

20 “(D) danger to the life or physical safety
21 of any person.

22 “(3) STANDARD.—A district court of the
23 United States shall issue a nondisclosure require-
24 ment order or extension thereof under this sub-
25 section if the court determines, giving substantial

1 weight to the certification under paragraph (2) that
2 there is reason to believe that disclosure of the infor-
3 mation subject to the nondisclosure requirement dur-
4 ing the applicable time period will result in—

5 “(A) a danger to the national security of
6 the United States;

7 “(B) interference with a criminal, counter-
8 terrorism, or counterintelligence investigation;

9 “(C) interference with diplomatic relations;
10 or

11 “(D) danger to the life or physical safety
12 of any person.”.

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